

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals }
 }
 }
of }
 }
ARTHUR L. and MARY W. SPRING }

Appearances:

For Appellants: Leslie B. Knox, Certified Public
Accountant

For Respondent: Burl D. Lack, Chief Counsel;
Crawford H. Thomas, Associate Tax
Counsel

O P I N I O N

These appeals are made pursuant to Section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in partially denying the claims of Arthur L. Spring and his wife Mary W. Spring for refund of personal income tax in the amounts of \$52.73 each for the year 1948 and \$80.35 each for the year 1949.

The Appellants originally filed separate returns for 1948 and 1949 and claimed the standard deduction in accordance with Sections 17325 et seq. of the Revenue and Taxation Code as it then existed. In 1952 they discovered that embezzlement losses had occurred during the years in question. They then filed amended returns listing itemized deductions of \$5,572.28 and \$9,940.85 for the years 1948 and 1949, respectively, including the respective sums of \$5,371.90 and \$9,750.47 for the embezzlement losses,

The Franchise Tax Board disallowed the itemized deductions on the ground that Appellants had made an irrevocable election to take the standard deduction in lieu thereof. The Appellants contend that the regulations allow them to take the embezzlement loss deductions in amended returns.

The pertinent provisions of the statutes and the regulations relating to the standard deduction are:

"The standard deduction...shall be in lieu of all deductions other than those which under Section 17108 are to be subtracted from gross income in computing adjusted gross income.'" (Section 17326 of the Revenue and Taxation Code).

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"(c) If the taxpayer does...signify [his election to take the standard deduction] such election shall be irrevocable." (Section 17327 of the Revenue and Taxation Code).

". . .The election [of the standard deduction]... shall be irrevocable for the taxable year for which such election is made..." (Regulation 17325-17329.1 of Title 18 of the California Administrative Code).

The provisions of the statute and the regulation upon which Appellants rely for deduction of the embezzlement losses are:

"The deductions and credits provided for in this part shall be taken for the taxable year in which 'paid or accrued' or 'paid or incurred,' dependent upon the method of accounting upon the basis of which the net income is computed, unless in order clearly to reflect the income the deductions or credits should be taken as of a different period...." (Section 17563 of the Revenue and Taxation Code).

". . .If subsequent to its occurrence...a taxpayer first ascertains the amount' of a loss sustained during a prior taxable year which has not been deducted from gross income, he may render an amended return for such preceding taxable year including such amount of loss in the deductions from gross income, . . .A loss from...embezzlement is deductible for the year in which the embezzlement occurred, regardless of the discovery date...." (Regulation 17563(b) of Title 18 of the California Administrative Code).

Appellants do not deny that in their original returns they elected to take the standard deduction nor do they contend that the itemized deductions subsequently claimed are of the type specified in Section 17108 of the Revenue and Taxation Code. They argue, however, that in the event of a loss by embezzlement Regulation 17563(b) gives an unqualified right to the deduction at the time of discovery of the loss.

The sections relating to the standard deduction are substantially the same as Section 23(aa) of the United States Internal Revenue Code of 1939 and the regulations thereunder are substantially the same as the Federal regulations. The Federal Courts have consistently held that the election to take the standard deduction is irrevocable and bars any later attempt to take specific deductions in lieu of which,

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as provided by the statute, the standard deduction was taken (Raymond E. Kershner, 14 T.C. 168; Robert V. and Jennie J. Johnston, 25 T.C. 106; Joseph J. Vidmar, T.C. Memo., Docket No. 35043, entered August 5, 1952).

Section 17563 of the Revenue and Taxation Code does no more than prescribe the period for which a deduction may be taken. The regulation adopted pursuant to this section cannot enlarge upon this section and allow a deduction prohibited elsewhere by statute. As we construe Regulation 17563(b), it means that if an embezzlement loss is otherwise deductible, the deduction must be taken for the year in which the embezzlement occurred, rather than the year of discovery. Appellants made an irrevocable election to take the standard deduction in lieu of itemized deductions and they are now precluded from taking the deductions claimed.

O R D E R

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in partially denying the claims of Arthur L. and Mary W. Spring for refund of personal income tax in the amounts of \$52.73 each for the year 1948 and \$80.35 each for the year 1949, be and the same is hereby sustained,

Done at Sacramento, California, this 8th day of August, 1957, by the State Board of Equalization.

Robert E. McDavid, Chairman

George R. Reilly, Member

Paul R. Leake, Member

_____, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary